

C. The Terms and Conditions of the Voting Trust Fully Conform to the Commission's Requirements.

This Consolidated Application requests, *inter alia*, special temporary authority for an interim transfer of control of the holders of the MCI Authorizations to an independent voting trustee. The interim authority would permit the Trustee to acquire, hold, and, subject to certain limitations, vote the Shares pursuant to the terms of a Voting Trust Agreement dated September 30, 1997 (the "Trust Agreement," attached hereto as Exhibit A), pending Commission consideration of the Transfer Applications filed concurrently herewith. The Trust Agreement satisfies Commission requirements intended to ensure the independence of an interim trustee pending Commission action on the applications for transfer of control in the context of a tender offer.

In ensuring the Trustee's independence, the Trust Agreement provides in pertinent part that the Trustee shall vote the Shares only as summarized below:

- (1) in any manner necessary, as he in his sole discretion determines, to cause himself or his nominees to become members of the Board of Directors of MCI (the "MCI Board") during the term of the Trust Agreement, except that the aggregate of all directors so elected shall not constitute a majority of the MCI Board (unless and until the Transfer Applications have been granted by the FCC); no director so elected may be a partner, officer, employee, director, shareholder, or affiliate of WorldCom or have any business or familial relationship (as defined in the *Policy Statement*) with WorldCom or any officer, employee, shareholder, or affiliate of WorldCom; and all directors so elected are subject to the same restrictions on communications as the Trustee;
- (2) in any manner necessary to remove and replace any director or officer of MCI who resigns, or who opposes, impedes, or impairs the effectuation of the Transactions or any obligations of MCI with respect thereto, or is wasting corporate assets or otherwise acting in a manner inconsistent with such director's fiduciary responsibilities,

provided that no director so elected may be a partner, officer, employee, director, shareholder, or affiliate of WorldCom or have any business or familial relationship (as defined in the *Policy Statement*) with WorldCom or any officer, employee, shareholder, or affiliate of WorldCom; and all directors so elected are subject to the same restrictions on communications as the Trustee;;

- (3) for any proposal necessary to effect (or consistent with the effectuation of) the Transactions or any obligations of MCI with respect thereto;
- (4) in opposition to any proposal inconsistent with the consummation of the Transactions or any obligations of MCI with respect thereto; and
- (5) in all other respects, to maintain the present management and operations of MCI and its FCC licensee subsidiary corporations.

The Trust Agreement further provides that:

- (1) the Trustee may not be a partner, officer, employee, director, shareholder, or affiliate, or have a business or familial relationship with, WorldCom;
- (2) the Trustee may communicate with, and provide reports to, WorldCom concerning the implementation of the Transactions and the management and operations of MCI and its direct and indirect licensee subsidiaries, provided that all communications are in writing;
- (3) neither WorldCom, nor any of its officers, directors, employees, partners, shareholders, or affiliates is permitted to communicate with the Trustee regarding the operation or management of MCI or its direct and indirect licensee subsidiaries, but WorldCom may communicate with the Trustee regarding the transfer of the stock of MCI or other information pertaining to the mechanics of implementing the Transactions, including requiring the Trustee to grant a security interest in the Shares to secure loans to the extent the proceeds thereof will be used directly or indirectly in connection with the acquisition of the Shares and the voting rights remain with the Trustee, provided that all communications are in writing;

- (4) the Trustee shall have no authority to sell, transfer, assign, pledge, or otherwise dispose of or encumber the Shares, except to the extent otherwise specifically provided in the Trust Agreement;
- (5) WorldCom shall not directly or indirectly influence the actions of the Trustee during the pendency of the Transfer Applications, except as expressly permitted by the terms of the Trust Agreement;
- (6) the Trust shall be irrevocable during the pendency of the Transfer Applications; and
- (7) no person other than the Trustee shall have any voting rights in respect of the Shares so long as the Trust Agreement is in effect.

Under the terms of the Voting Trust, the Trustee is required to transfer the Shares to WorldCom when:

- (1) the Commission has granted the Step II Applications and that grant has become effective, following receipt of written certification from WorldCom that it has obtained all other federal, state, and foreign regulatory approvals which, if not obtained in connection with the Transactions, would have a material adverse effect on MCI's or WorldCom's business, operations, assets, liabilities, financial condition, or results of operations; or
- (2) at such other time that there has been a determination by the Trustee that the delivery and transfer of the Shares to WorldCom would not violate the Communications Act of 1934, as amended (the "Communications Act") or the rules and regulations of the FCC and the State Regulatory Agencies that have issued licenses, permits, and authorizations to MCI (directly or indirectly) or other regulatory agencies of competent jurisdiction.

The Trustee must sell the Shares as soon as practicable to one or more third parties in such manner as will maximize the proceeds to WorldCom if:

- (1) the FCC issues an order denying the Step II Applications that is no longer subject to administrative or judicial review;
- (2) WorldCom notifies the Trustee in writing during the pendency of the Step II Applications that it desires to sell the Shares and the Trustee fails to disprove such decision to sell;

- (3) WorldCom informs the Trustee in writing that it has withdrawn the Step II Applications; or
- (4) any other circumstances occur under which the Trustee is required by law to sell the Shares.

Review of the terms and conditions specified in the Trust Agreement thus demonstrates that the Trust Agreement conforms to the requirements specified in the *Policy Statement* and subsequent Commission decisions³⁹ to ensure the independence of the trustee. By the terms of the Trust Agreement, the Transferee is precluded from influencing the Trustee's actions with respect to the business and operations of MCI, and the Trustee can take only certain very specific and prescribed actions with respect to the Shares. While the Trustee can exercise the right to vote the Shares when necessary to promote consummation of the Offer and the related transactions, or to prevent malfeasance by officers or directors of MCI, the Trustee is generally obligated to support the existing management and preserve MCI's existing operations. If Shares need to be sold due to termination of the Offer or for other reasons, the Trustee controls their disposition, consistent with his fiduciary obligations. In sum, as required by Commission policies, the Trust Agreement effectively circumscribes the role of the Trustee to that of a caretaker of MCI's business.

Therefore, because the Trust Agreement fully satisfies Commission requirements, and the Trustee is himself eminently qualified to serve in that capacity, the Commission should grant the requested STA and the Step I Applications expeditiously in order to maintain the Commission's neutrality, accommodate the objectives and policies of the SEC

³⁹ See *supra* notes 34-35.

and the securities laws, and permit the Offer to go forward without delay during the pendency of the Step II Applications. The Applicants acknowledge that the grant of the requested STA and of the Step I Applications is made without prejudice to Commission consideration of the Step II Applications.

D. Conclusion: The Commission Should Promptly Grant the Requested STA and Interim Transfer to the Independent Trustee.

WorldCom's hostile tender Offer for MCI's stock is precisely the kind of transaction that the *Policy Statement* addresses. Because of the concurrent competing offer proposing the acquisition of MCI by BT (which is supported by the MCI Board), and the need promptly to present WorldCom's Offer to MCI's shareholders so that they can evaluate its merits simultaneously with those of the BT-MCI Acquisition, avoidance of unnecessary administrative delay and regulatory gamesmanship by third parties is essential to preserve the Commission's neutrality. In particular, unnecessary delays, in this instance, would unfairly provide certain parties opportunities to erect barriers to the Offer, contrary to the policies underlying relevant securities regulation. While the reported cases under the *Policy Statement* do not appear to have addressed situations involving all the types of FCC Authorizations held by MCI, the governing principles and underlying policy objectives are the same. The Commission has stated that the *Policy Statement* and the procedures specified therein are to be applied with respect to all services and types of communications companies within its jurisdiction. It is therefore appropriate for the Commission to utilize consistently these expedited procedures for all of MCI's authorizations.

With respect to the instant situation, WorldCom respectfully submits that the Commission's requirements for grant of the STA and the Step I Applications are satisfied and that their prompt grant would further the public interest. Use of an interim voting trust arrangement to permit the Offer to proceed without unnecessary delay that could prejudice its success is consistent with Commission policies and procedures codified in the *Policy Statement* and compatible with other federal laws. The terms of the Voting Trust Agreement conform to Commission requirements intended to ensure the independence of a voting trustee during the pendency of applications for transfer of control to WorldCom. The Trustee selected by WorldCom is fully qualified to hold that position and fulfill his responsibilities under the Trust Agreement.

Therefore, the Commission should expeditiously grant the STA Request and approve the Step I Applications requesting grant of authority for an interim transfer of control of MCI to the Trustee.

III. THE PUBLIC INTEREST BENEFITS OF THE TRANSACTIONS ARE SUBSTANTIAL AND PERSUASIVE.

A. The Merger of MCI and WorldCom Furthers the Public Interest Because it Will Enhance Competition in Multiple Sectors of the Telecommunications Industry.

Pursuant to Sections 214(a) and 310(d) of the Communications Act, the Commission must review the FCC Applications to determine that transfers of the subject licenses and authorizations would promote the public interest, convenience, and necessity.⁴⁰ It is well

⁴⁰ *BT/MCI Order*, *supra* note 5, at ¶ 2.

understood that this standard is to be "so construed as to secure for the public the broad aims of the Communications Act."⁴¹

In its recent decision approving the merger of Bell Atlantic and NYNEX, the Commission refined the standards to be used under this expansive public interest test in evaluating proposed mergers between telecommunications carriers.⁴² As explained by Chairman Hundt in recent Congressional testimony, the Commission must independently determine "whether the proposed merger will enhance competition, or whether it will slow the arrival of competitive markets and deregulation."⁴³ This evaluation generally involves a balancing of the potential competitive benefits in one or more market segments against the

⁴¹ *Western Union Division, Commercial Telegraphers' Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C.), *aff'd*, 338 U.S. 864 (1949). *See also FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953).

In analyzing the merits of a transfer of control application, the Commission must review the proposed transaction on its individual merits, without consideration of alternative transactions or applications. *See, e.g., Application of Continental Tel. Corp., Memorandum Opinion and Order*, 41 F.C.C. 2d 957, 958 (1973); *Viacom*, 8 FCC Rcd. 8439 and *QVC*, 8 FCC Rcd. 8485 (approving simultaneously the STA requests of competing offerors); *Eugene McCarthy*, 60 Rad. Reg. 2d (P & F) 1207, and *Macfadden Acquisition Corp.*, 60 Rad. Reg. 2d (P & F) 872 (approving STA requests of competing offerors).

⁴² In *Re Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corporation and its subsidiaries, Memorandum Opinion and Order*, File No. NSD-L-96-10, FCC 97-286 (rel. Aug. 14, 1997) ("*BA/NYNEX Order*") at ¶¶ 37 - 42. This analytical framework was also applied in the Commission's recent decision approving the proposed acquisition of MCI by BT. *BT/MCI Order*, *supra* note 5, at ¶¶ 33-42.

⁴³ Reed E. Hundt, *Testimony on the 1996 Telecommunications Act: An Anti-trust Perspective*, Before the Subcommittee on Antitrust, Business Rights and Competition of the Committee on the Judiciary of the U.S. Senate, Sept. 17, 1997 ("*Hundt Testimony*") at 2.

potential competitive detriments in one or more other market sectors.⁴⁴ Significantly, however, as Chairman Hundt explained,

Mergers and other consolidations can be a potent competitive force. The synergies that result from combining assets may create from two small less efficient firms a large, more efficient one. The effect can be actually to deconcentrate the market, as the newly created and newly enabled merged firm wins market share from incumbent market leaders.⁴⁵

The proposed merger between WorldCom and MCI is intended to capture just such synergies, efficiencies, and economies. By combining the intellectual energy, capital, management skills, and expertise of WorldCom and MCI, two pioneering and entrepreneurial telecommunications companies, the merger will promote achievement of

⁴⁴ In addition to its jurisdiction pursuant to Titles II and III of the Communications Act to review transfers of control of licenses and authorizations to determine whether the transfer serves the public convenience and necessity, the Commission also has jurisdiction under Sections 7 and 11 of the Clayton Act to review the competitive impact of such transfers. As the Commission has previously held, however, this authority is largely duplicative, since the Commission's "public interest authority under the Communications Act to consider the impact of the proposed transfer on competition is sufficient to address the competitive issues raised by . . . proposed merger[s]." *BT/MCI Order*, *supra* note 5, at ¶ 28 and nn.43-44.

⁴⁵ *Hundt Testimony*, *supra* note 43, at 6.

what the Commission has identified as the "overriding goal" of the Telecommunications Act of 1996: "to open all telecommunications markets to competition."⁴⁶

Evaluated under the applicable Commission review standards, the competitive benefits of the proposed Merger, particularly for local, interexchange, and international services, are substantial, while there are no adverse effects. Most of the activities of WorldCom and MCI are complementary rather than directly competitive. In addition, significantly, neither WorldCom nor MCI controls any bottleneck facilities or incumbent carrier network, or has market power in any telecommunications service.⁴⁷ The industry segment in which their combined market shares will be largest -- long distance services -- is the sector that is the most competitive and has virtually no barriers to entry. Further, the Commission's own statistics demonstrate that the proposed combined company's market

⁴⁶ *BT/MCI Order*, *supra* note 5, at ¶ 6; *see also Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, FCC Docket No. 96-98, FCC 96-325, at ¶ 4 (Aug. 8, 1996) ("*Local Competition Order*") (noting the importance of local competition not only in providing economical and innovative services to customers, but also in preventing incumbents from impeding competition through bottleneck control of facilities). *See also Remarks of FCC Commissioner Rachelle B. Chong [Before the Conference on] "Bridging Digital Technologies and Regulatory Paradigms," "Interesting Times at the FCC," Berkeley, California (June 27, 1997) at 5*, voicing the opinion that "the Act allows for communications players to seek out new business opportunities and develop synergies with others in order to better compete."

⁴⁷ *Cf. BT/MCI Order*, *supra* note 5, at ¶ 188 (finding BT to have "near monopoly control" over local access services in the U.K. which it had leveraged to maintain high market shares of the intercity and international services sectors).

share will be less than half that of AT&T.⁴⁸ Rather than being a case in which there is a significant likelihood that a combination would eliminate or retard competition, this is clearly a case in which the results will be only pro-competitive.⁴⁹ Review of the overall impact of the merger on competition, therefore, demonstrates that approval of the Transfer Applications would further the public interest and should be granted expeditiously.⁵⁰

B. The Pro-competitive Merger of WorldCom and MCI Will Result in Substantial Enhancement of Local, Interexchange, and International Competition.

1. Numerous Synergies, Efficiencies, and Economies Will be Achieved Through the Merger of WorldCom and MCI.

WorldCom has initiated its tender Offer to bring substantial benefits to the public, telecommunications customers, and its shareholders from the combination of MCI and WorldCom to create a pre-eminent provider of one-stop-shopping advanced communications services. The combination of MCI and WorldCom will produce an efficient

⁴⁸ See, e.g., J. Bender, Industry Analysis Div., Com. Car. Bur., FCC, *Long Distance Market Shares*, 1997 ("*IXC Shares Report*") at 4, 16, 24; AT&T's share of presubscribed lines is 63%, as compared to a total of 18% for a combined MCI -WorldCom. *Id.* at 4.

⁴⁹ Cf. *BA/NYNEX Order*, *supra* note 5, at ¶ 48.

⁵⁰ Significantly, the Commission has already approved the proposed acquisition by BT of MCI, a transaction resulting in a combination larger in scope than that proposed here, and one involving a dominant carrier in one of the world's largest telecommunications markets. See *BT/MCI Order*, *supra* note 5, at ¶¶ 19-20. Grant of the transaction proposed here will avoid the anti-competitive consequences of the BT-MCI Acquisition identified by the Commission. See, e.g., *id.* at ¶ 202. Moreover, it generates additional pro-competitive benefits resulting from the WorldCom-MCI merger itself, particularly in the market segments -- U.S. local, interexchange, and international seamless services -- in which the Commission anticipated benefits from the proposed BT-MCI acquisition that would counter-balance the competitive harm anticipated to result from that acquisition. *Id.* at ¶ 132.

and well positioned competitor in the fastest growing segments of the global market, such as local services and advanced data services, with the combined expertise and capital to meet the expanding and increasingly diversified needs of sophisticated business and residential customers. In many ways, the merger will advance the "broad aims of the Communications Act," which "include, among other things, the implementation of Congress' pro-competitive, de-regulatory national policy framework for telecommunications, preserving and advancing universal service, and accelerat[ing] . . . private sector deployment of advanced telecommunications and information technologies and services."⁵¹ Approval of the proposed Transactions "will enhance competition"⁵² by increasing the resources, facilities, and

⁵¹ *BT/MCI Order*, *supra* note 5, at 3, citing *BA/NYNEX Order*, *supra* note 42, at ¶ 2, citing H.R. Rep. No. 104-458 at 1 (1996), and 47 U.S.C. § 254 (1997) (interior quotation marks omitted). While both MCI and WorldCom each have a larger presence in the domestic interexchange market than BT, their combined market shares are less than half that of AT&T alone. *See supra* note 48. This market segment, which was opened to competition long before intrastate and overseas markets, is already highly competitive, with more than 800 alternative providers and few entry barriers of any kind, and, in addition, it is the focus for U.S. market entry by the incumbent local exchange carriers and overseas carriers. The proposed business combination will not only increase competition in the interexchange market, it will promote competition in the far more concentrated local facilities and overseas markets. *Cf. BT/MCI Order*, *supra* note 5, at ¶ 152; *see also IXC Shares Report* at 4; Frost & Sullivan, *U.S. Long-Distance Service and Reseller Markets - Domestic, Network Status, and International Markets* at 1, 2 (Oct. 1996).

⁵² *BA/NYNEX Order*, *supra* note 42, at ¶ 2.

personnel available to the combined company and allowing it to take optimal advantage of operational synergies, cost savings,⁵³ and complementary service offerings.

In combination, WorldCom and MCI can create a new-generation telecommunications provider that can grow and thrive in the increasingly competitive domestic and international telecommunications marketplace. MCI has built a well-deserved reputation as a vigorous competitor in domestic interexchange services.⁵⁴ WorldCom, which has successfully grown from a regional reseller of long distance services into a facilities-based carrier with an expanding international presence, similarly is a long distance innovator and has had a special focus on developing state-of-the-art business services, such as new broadband and advanced data services. The two carriers have had similar innovative and entrepreneurial approaches to telecommunications services, with MCI having been the first competitor to penetrate successfully the domestic long distance market and WorldCom having been the leading carrier in opening local services and advanced data services to competition.

With the remaining legal and regulatory barriers to entry being dismantled, both the U.S. and overseas telecommunications markets have the potential to become more

⁵³ Substantial synergies are expected to be realized by combining the long distance and local operations of MCI and WorldCom to achieve better utilization of the combined network and other operational savings. Significantly, development of local facilities-based services is particularly capital-intensive, and the proposed merger will allow both parties to optimize their networks.

⁵⁴ MCI is the second largest U.S. long distance carrier providing domestic voice and data services primarily by fiber and terrestrial digital microwave facilities and international services primarily by submarine cable systems, satellites, and leased international facilities. *BT/MCI Order*, *supra* note 5, at ¶ 19.

competitive. In the United States, both domestic and foreign-affiliated firms, large and small, are entering all industry segments, including both resold and facilities-based local services, at a pace that is accelerating daily. The number of authorized interstate carriers is in the hundreds.⁵⁵ GTE and other local exchange carriers are successfully entering the long distance market. The former Bell Operating Companies, which can now offer long distance services out of region⁵⁶ and certain prescribed long distance services in region,⁵⁷ expect soon to offer long distance services more broadly in their service territories. Further, implementation of the World Trade Organization's Agreement on Basic Telecommunications Services ("WTO Agreement") will afford the world's largest international carriers increased access to the entire U.S. telecommunications market in a matter of months.⁵⁸ In this dynamic and competitive marketplace, WorldCom believes that the proposed Merger will enhance competition and continue the long-standing record of success and innovation that have been hallmarks of both MCI and WorldCom. As the Commission has recognized, even with the passage of the pro-competitive 1996 Telecommunications Act and the WTO, significant barriers to entry into domestic and international telecommunications services remain, and

⁵⁵ Frost & Sullivan, *supra* note 51, at 1.

⁵⁶ 47 U.S.C. § 271 (b) (2).

⁵⁷ 47 U.S.C. §§ 271(b)(3); 271(g) (permitting RBOC provision of in-region incidental interLATA services such as audio and video programming and commercial mobile radio services).

⁵⁸ See International Settlement Rates, *Report and Order*, IB Docket No. 96-261, FCC 97-280 at ¶¶ 9-12 (Aug. 18, 1997) ("*Benchmarks Order*").

[e]ntrants must still attract capital, and amass and retain the technical, operational, financial and marketing skills necessary to operate as a telecommunications provider. For mass market services, entrants will have to invest in establishing brand name recognition and, even more important, a mass market reputation for providing high quality telecommunications services.⁵⁹

Combining their complementary resources will better enable WorldCom and MCI to build a well-positioned, full-services carrier that will be a worldwide, not just domestic, leader in the provision of advanced telecommunications services.

2. Local Services Competition Will be Particularly Enhanced from the Merger of WorldCom and MCI.

Of particular importance, by consolidating WorldCom's management skills and experience with MCI's sales and marketing expertise, the proposed Merger will significantly enhance the combined company's ability to compete in the least competitive segment of the domestic telecommunications industry: local exchange services. The Merger will result in a combined company that is far better positioned to compete against the powerful and monopolistic incumbents and promote deconcentration of the local services sector.⁶⁰ This critical industry segment is still overwhelmingly dominated by the incumbent local exchange carriers, whose ratepayer-financed ubiquitous networks give them substantial market power and a tremendous cost advantage over their new entrant competitors in serving

⁵⁹ *BA/NYNEX Order*, *supra* note 42, at ¶ 6.

⁶⁰ *Cf. Hundt Testimony*, *supra* note 43, at 6.

new customers.⁶¹ As Chairman Hundt recently reported to Congress, "local competition is particularly important now because our local networks need to evolve to adapt to the country's growing data needs."⁶² The greater resources available to the combined company as a result of the merger will allow it to pursue local competition and interconnection opportunities even more aggressively. In combination, WorldCom and MCI will thus expand consumer choice and accelerate the introduction of new broadband and advanced data communications services and products.

The public can particularly benefit from the combined company's enhancement of real competition in the local services sector, both in the U.S. and abroad. WorldCom has already become a prominent and highly-regarded carrier in this segment,⁶³ but even the combined local market share of MCI and WorldCom is still dwarfed by the respective shares of the incumbent local exchange carriers, who have ubiquitous networks reaching virtually every U.S. home and business, giving them still near, if not absolute, monopolies. WorldCom's established presence as a local facilities-based provider in more than 50 domestic markets, however, should help jumpstart MCI's local services entry strategy and

⁶¹ *Ameritech Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137 at ¶ 12 (Aug. 19, 1997) ("*Ameritech Section 271 Order*") (denying Ameritech's "Section 271" market entry petition). Incumbent local exchange carriers already control about ten times as many fiber miles as the exchange carriers. J. Kraushaar, Industry Analysis Div., Com. Car. Bur., FCC, *Fiber Deployment Update End of Year 1996* at 26, 39 ("*Fiber Report*") (ILEC fiber miles in excess of 12.3 million; CLEC fiber miles approximately 1.3 million).

⁶² *Hundt Testimony*, *supra* note 43, at 4.

⁶³ *See Paradigm Study*, *supra* note 3, at 435 - 52.

will result in significant savings for the combined company.⁶⁴ By linking WorldCom's local facilities to MCI's long distance customer base, the combined company will substantially enhance its effectiveness in competing with the incumbent local exchange carriers.⁶⁵ As the Commission recognized in the *Interconnection Order*, eliminating the incumbents' market power inherent in control of local bottleneck facilities is essential to ensuring full competition in all segments of the telecommunications industry:

[T]he opening of one of the last monopoly bottleneck strongholds in telecommunications -- the local exchange and exchange access markets -- to competition is intended to pave the way for enhanced competition in *all* telecommunications markets, by allowing all providers to enter all markets.⁶⁶

Creating a more effective competitor for local services will also accelerate the introduction of new broadband and other advanced data services and products, enhancing choices for U.S. customers and helping to realize the statutory goals of the Telecommunications Act of 1996. WorldCom expects that the marketplace will respond favorably to the combined entity and its expanded range of services, enabling it to attract and, through reduced churn, retain significant numbers of new customers.

⁶⁴ Cf. "BT likely to keep MCI deal terms," *Financial Times*, at 1, August 19, 1997 (citing MCI's report of losses of \$800 million in local services expansion costs).

⁶⁵ Cf. *BT/MCI Order*, *supra* note 5, at ¶¶ 88 - 89.

⁶⁶ *Local Competition Order*, *supra* note 46 at ¶ 4.

**3. Substantial Enhancement of International Services Competition
Will Likely Result from the Merger of WorldCom and MCI.**

The WorldCom-MCI Merger will also enhance the ability of these U.S.-based carriers to penetrate formerly closed overseas markets and take advantage of the opportunities abroad that the U.S. government so strongly advocated in achieving the WTO Agreement. Combining WorldCom's pan-European Ulysses fiber network and city networks in key European cities with MCI's international operations will create a leading alternative provider of telecommunications services in deregulating European and Asian markets. As pioneers in the industry, WorldCom and MCI have complementary skills in competing in such markets, and combining their expertise will permit them to develop effective solutions to meet the increasingly diverse and complex telecommunications needs of multinationals, governments, other business entities, and customers.

Moreover, as the Commission has recognized, "[a]n important purpose of the WTO Basic Telecom[munications] Agreement is to enable carriers to provide international service on an end-to-end basis."⁶⁷ WorldCom has already demonstrated its ability to make significant contributions to emerging European competition, both by providing end-to-end services to multinational businesses, and by developing innovative telecommunications infrastructure projects, such as the Gemini Submarine Cable System across the North Atlantic and the Ulysses pan-European fiber optic system. These projects offer both U.S.-based and overseas end-users the high quality, cost-effective services they require and have come to depend on from WorldCom in the U.S. The Merger of WorldCom and MCI will lead to expanded

⁶⁷ *BT/MCI Order*, *supra* note 5, at ¶ 4 (citation omitted).

offerings of such seamless international services, thereby enhancing the emerging competition in a service in which consumers currently have few options.⁶⁸

By providing the innovative services and high capacity facilities that end-users are increasingly demanding, WorldCom has already established itself as an industry leader in advocating and demonstrating the benefits of competition abroad even in countries where competitive opportunities have been extremely restricted. The proposed WorldCom-MCI Merger will provide WorldCom with additional facilities and resources to accelerate its expansion into international markets now that international opportunities are increasing and WorldCom is beginning to compete with the large incumbent carriers to capture those opportunities. As the Commission has recognized, U.S. consumers benefit from fully competitive world markets in the form of new and better services at lower prices, and promoting the success of U.S.-based carriers in entering markets abroad will have measurable and substantial benefits for consumers in the U.S.⁶⁹

⁶⁸ Cf. *BT/MCI Order*, *supra* note 5, at ¶ 130 (finding the only providers of such services to be the Concert, WorldPartners, and Global One alliances).

⁶⁹ Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd. 3873, 3877 (1995) ("*Market Entry Order*"), *recon. pending* ("establishing an effectively competitive global communications market could result in reduced rates, increased quality, and new innovative services for U.S. consumers, including the availability of global communications services."). The Commission clarified that the Commission's regulatory focus is on routes between the U.S. and foreign countries, including the U.S. end of "global, seamless network services," *Id.* at 3877-78. The Commission has recognized that competition in such services "requires significant resources, which must extend throughout the world." *BT/MCI Order*, *supra* note 5, at ¶ 130. See also *Benchmarks Order*, *supra* note 58, at ¶¶ 3, 7; Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket 97-142, *Order and Notice of Proposed Rulemaking*, FCC 97-195 (rel. June 4, 1997) ("*Foreign Participation Notice*").

WorldCom has long supported the U.S. government's successful efforts to achieve the WTO Agreement because of the favorable market-opening opportunities it creates in formerly-closed international markets. Yet, WorldCom, which is long-accustomed to battling the incumbent local exchange carriers in the U.S., does not underestimate the substantial resources and facilities required to be successful in overseas markets where competition is still little more than embryonic. By combining with MCI, WorldCom believes that it will be able to be a more aggressive and successful competitor and can ensure that the public can receive the substantial benefits of effective competition in both U.S. local and international markets that have for too long been closed.⁷⁰ Approval of the Merger will therefore advance the Commission's objective of benefitting U.S. telecommunications consumers by promoting competition worldwide.⁷¹

C. The Merger Will Accelerate Competition Without Raising Any of the Competitive Concerns Sometimes Raised by Mergers Involving Carriers with Market Power.

In discussing the Commission's recent approval of the Bell Atlantic/NYNEX merger, which involved two of the largest telecommunications providers in the New York metropolitan area, Chairman Hundt noted that although "the combination of two of a small number of the most significant participants in any relevant market raises concerns under [the Commission's] public interest analysis, . . . the public interest standard requires the

⁷⁰ See *BT/MCI Order*, *supra* note 5, at ¶ 127 (strengthening the position of a competitor to the local exchange carriers "likely to enhance competition in this relevant market").

⁷¹ See, e.g., *BT/MCI Order*, *supra* note 5, at ¶ 209; *Local Competition Order*, *supra* note 46; *Market Entry Order*, 11 FCC Rcd. 3873.

Commission to balance this anti-competitive effect against other pro-competitive effects that the transaction might entail in other market.”⁷² In that decision, competitive benefits throughout the merged companies’ service territories, resulting from numerous commitments agreed to by the parties as a condition to approval, were found to outweigh potential anti-competitive effects in the New York local market.⁷³ The case for approval of the instant business combination is significantly stronger, for there are no specific anti-competitive concerns, such as enhancement of a party’s existing market power, to be overcome.

1. The Merger Will Accelerate the Development of Competition by Creating a Leading and Innovative Provider of Integrated “One-Stop Shopping” For Communications Services.

In the instant context, neither WorldCom nor MCI is a dominant carrier in any telecommunications market. Moreover, the revenue shares of both WorldCom and MCI are minimal in the sector on which their capital investment and expansion programs primarily focus: local services (both domestic and international). It is beyond dispute that these markets are populated by incumbents of long-standing with substantial capital resources, ubiquitous infrastructure, and control of bottleneck facilities. The Commission has repeatedly recognized the public interest benefits of improved access to capital that can “fuel investment in state-of-the-art infrastructure that leads to economic growth and job formation in the U.S. economy and facilitates competition among U.S. carriers both at home and

⁷² *Hundt Testimony*, *supra* note 43, at 8.

⁷³ *BA/NYNEX Order*, *supra* note 42, at ¶ 178.

abroad.”⁷⁴ With respect to enhancing the level of competition in this market segment in particular, WorldCom’s experience in local competition initiatives makes a WorldCom-MCI Merger considerably more likely than the previously-approved acquisition of MCI by BT to enhance the level of competition in this highly concentrated sector.⁷⁵

The combination of WorldCom and MCI can bring to local services the critical mass of resources necessary to become, in Chairman Hundt’s terminology, “the potent competitive force” required to deconcentrate the market.⁷⁶ Thus, in several significant ways the proposed Merger will generate substantial additional competitive pressure on the local telecommunications market.

2. MCI and WorldCom’s Lack of Market Power Avoids Anti-Competitive Concerns.

Significantly, unlike the participants to the mergers involving the Bell Operating Companies and the acquisition of MCI by BT recently approved by the Commission, neither WorldCom nor MCI controls bottleneck facilities. This eliminates a key concern that the Commission weighs heavily, and negatively, in its cost-benefit merger analysis.⁷⁷ Nor is the proposed Merger likely to have any significant adverse impact on the Commission’s ability

⁷⁴ Sprint Corporation, *Declaratory Ruling and Order*, DA 96-1560, File No. ISP-96-003 at ¶ 12 (Chief Int’l Bur. Sept. 18, 1996) (permitting increased foreign ownership of Sprint).

⁷⁵ See *BT/MCI Order*, *supra* note 5, at ¶¶ 209-11.

⁷⁶ See *Hundt Testimony*, *supra* note 43, at 6.

⁷⁷ See *BA/NYNEX Order*, *supra* note 42, at ¶ 37 (“[W]e evaluate the effects of the merger on competition in the relevant market, such as whether the merger is likely to result in either unilateral or coordinated effects that enhance or maintain the market power of the merging parties.”). See also *id.* at ¶ 2; *BT/MCI Order*, *supra* note 5, at ¶ 3 n.8.

to enforce its regulatory oversight responsibilities, given WorldCom and MCI's lack of market power and foreign affiliation. The Merger is similarly unlikely to increase the likelihood of coordinated action among other industry players because the long distance industry, rather than being highly concentrated, epitomizes the competitive marketplace.⁷⁸

Further, in contrast to the local services market, where there is "scarcely any competition,"⁷⁹ and new entrants have collective traffic shares of between one and two percent,⁸⁰ the long distance sector, in which WorldCom and MCI have had the longest operating experience, is the most open of all to competition, and the segment with the fewest entry barriers.⁸¹ The former Bell Operating Companies and large foreign-affiliated carriers are expected soon to enter this sector and to become vigorous competitors as a result of the opportunities available as a result of deregulation under the Telecommunications Act of 1996 and the WTO Agreement. Further, no "precluded competitor" who has previously been

⁷⁸ See *BA/NYNEX Order*, *supra* note 5, at ¶ 45.

⁷⁹ Remarks of Reed E. Hundt Before the American Enterprise Institute, "The Light at the End of the Tunnel vs. The Fog: Deregulation vs. The Legal Culture," Washington, D.C., August 14, 1997 (<<http://www.fcc.gov/Speeches/Hundt/spreh741.html>>, "AEI Speech") at 1.

⁸⁰ *Id.* at 3.

⁸¹ See, e.g., *Ameritech Section 271 Order*, *supra* note 60, at ¶ 16, where the Commission recognized that there is "a substantially competitive market for interstate interexchange services;" and at ¶ 17, finding that "BOC entry into the long distance market is likely to be much easier than entry by potential competitors into the local market[.]"

deterred or prevented by regulatory barriers from entering the market⁸² is being removed from the market by the Merger at a time when barriers that previously had precluded its entry are being removed. Thus, the expected pro-competitive public interest benefits of the proposed Transactions far outweigh any conceivable potential detriments.

D. Conclusion: The Commission Should Promptly Approve the Applications Because the Merger of WorldCom and MCI Will Enhance Competition and Otherwise Further the Public Interest.

By strengthening the ability of MCI and WorldCom to compete in all sectors of the U.S. and international markets, the proposed merger will enhance competition in both the U.S. and world markets. This is especially the case for the local exchanges currently controlled by incumbent monopoly carriers. The strategic partnership of WorldCom and MCI will advance the public interest by providing the capital, facilities, and human resources essential to the continued provision to the public of state-of-the-art telecommunications services at competitive prices.

The pro-competitive benefits to be achieved from a WorldCom-MCI Merger are substantial, and they not only equal, but greatly exceed, those expected to be derived from the acquisition by BT of MCI previously approved by the Commission. At the same time,

⁸² See *BT/MCI Order*, *supra* note 5, at ¶ 36 n.65 (citing the *BA/NYNEX Order*, *supra* note 42, at ¶ 60 and explaining that “precluded competitors” are the firms “most likely to have entered the relevant markets, but, until recently had been prevented or deterred from market participation by barriers that the 1996 Act seek[s] to lower”).

no lessening of competition in telecommunications services can be expected to result from consummation of the Transactions.⁸³

For all of the foregoing reasons, the Commission should promptly grant the STA Application to permit WorldCom to complete the Offer and, upon conclusion of the appropriate public notice period, approve the Applications to transfer of control of MCI to WorldCom.

Respectfully submitted,



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⁸³ Cf. *BT/MCI Order*, *supra* note 5, at ¶¶ 176-77 (finding the proposed BT-MCI merger likely to increase BT's ability and incentives to use its market power in an anti-competitive manner).

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